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Addendum StartPage: 0

SOAH DOCKET NO. 473-21-0538

PUC DOCKET NO. 51415

2021 APR 26 PM 1:03

APPLICATION OF SOUTHWESTERN
ELECTRIC POWER COMPANY FOR
AUTHORITY TO CHANGE RATES

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PUBLIC UTILITY COMMISSION
OF TEXAS

**COMMISSION STAFF'S SEVENTEENTH REQUEST FOR INFORMATION
TO SOUTHWESTERN ELECTRIC POWER COMPANY
QUESTION NOS. STAFF 17-1 THROUGH 17-13**

Pursuant to 16 Texas Administrative Code (TAC) § 22.144 of the Commission's Procedural Rules, the Staff of the Public Utility Commission of Texas (Staff) requests that Southwestern Electric Power Company (SWEPCO) and through its attorneys of record, provide the following information and answer the following question(s) under oath. The question(s) shall be answered in sufficient detail to fully present all of the relevant facts, within the time limit provided by the Presiding Officer or within 20 days, if the Presiding Officer has not provided a time limit. Please copy the question immediately above the answer to each question. These question(s) are continuing in nature, and if there is a relevant change in circumstances, submit an amended answer, under oath, as a supplement to your original answer. State the name of the witness in this cause who will sponsor the answer to the question and can vouch for the truth of the answer.

Provide responses to the Requests for Information by filing with the Commission solely through the Interchange on the Commission's website and provide notice, by email, to all other parties that the pleading or document has been filed with the Commission, unless otherwise ordered by the presiding officer pursuant to the Order Suspending Rules in Docket No. 50664.

Dated: April 26, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Rashmin J. Asher
Managing Attorney

/s/ Robert Dakota Parish
Robert Dakota Parish
State Bar No. 24116875
Justin C. Adkins
State Bar No. 24101070
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7442
(512) 936-7268 (facsimile)
Robert.Parish@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 26, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish
Robert Dakota Parish

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**COMMISSION STAFF'S SEVENTEENTH REQUEST FOR INFORMATION
TO SOUTHWESTERN ELECTRIC POWER COMPANY
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DEFINITIONS

- 1) "SWEPCO" or "Company" or "you" refers to Southwestern Electric Power Company, and any person acting or purporting to act on their behalf, including without limitation, attorneys, agents, advisors, investigators, representatives, employees or other persons.

- 2) "Document" includes any written, recorded, or graphic matter, however produced or reproduced, including but not limited to correspondence, telegrams, contracts, agreements, notes in any form, memoranda, diaries, voice recording tapes, microfilms, pictures, computer media, work papers, calendars, minutes of meetings or other writings or graphic matter, including copies containing marginal notes or variations of any of the foregoing, now or previously in your possession. In the event any documents requested by this Request for Information have been transferred beyond the Company's control, describe the circumstances under which the document was destroyed or transferred and provide an exact citation to the subject document. In the event that documents containing the exact information do not exist, but documents do exist which contain portions of the required information or which contain substantially similar information, then the definition of "documents" shall include the documents which do exist, and these documents will be provided.

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QUESTION NOS. STAFF 17-1 THROUGH 17-13**

INSTRUCTIONS

- 1) Pursuant to 16 TAC § 22.144(c)(2), Staff requests that answers to the requests for information be made under oath.
- 2) Please copy the question immediately above the answer to each question. State the name of the witness in this cause who will sponsor the answer to the question and can vouch for the truth of the answer.
- 3) These questions are continuing in nature, and if there is a relevant change in circumstances, submit an amended answer, under oath, as a supplement to your original answer.
- 4) Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural.
- 5) The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.
- 6) If any document is withheld under any claim of privilege, please furnish a list identifying each document for which a privilege is claimed, together with the following information: date, sender, recipients or copies, subject matter of the document, and the basis upon which such privilege is claimed.
- 7) Pursuant to 16 TAC § 22.144(h)(4), if the response to any request is voluminous, please provide a detailed index of the voluminous material.
- 8) Staff requests that each item of information be made available as it is completed, rather than upon completion of all information requested.

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**COMMISSION STAFF'S SEVENTEENTH REQUEST FOR INFORMATION
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QUESTION NOS. STAFF 17-1 THROUGH 17-13**

Staff 17-1 Please confirm that the Bradley M. Seltzer that provided rebuttal testimony is this proceeding is the same Brad Seltzer shown as a contact related to the article titled *“Determining whether a utility’s ratemaking treatment of an NOL carryforward complies with the normalization requirements”* published by Deloitte in 2014. Please also confirm that this article discusses IRS Private Letter Ruling (PLR) No. 201418024 which states in part:

Both Commission and Taxpayer have intended, at all relevant times, to comply with the normalization requirements. Commission has stated that, in setting rates it includes a provision for deferred taxes based on the entire difference between accelerated tax and regulatory depreciation, including situations in which a utility has an NOLC or MTCC. Such a provision allows a utility to collect amounts from ratepayers equal to income taxes that would have been due absent the NOLC and MTCC. Thus, Commission has already taken the NOLC and MTCC into account in setting rates. Because the NOLC and MTCC have been taken into account, Commission’s decision to not reduce the amount of the reserve for deferred taxes by these amounts does not result in the amount of that reserve for the period being used in determining the taxpayer’s expense in computing cost of service exceeding the proper amount of the reserve and violate the normalization requirements. We therefore conclude that the reduction of Taxpayer’s rate base by the full amount of its ADIT account without regard to the balances in its NOLC-related account and its MTCC-related account was consistent with the requirements of § 168(i)(9) and § 1.167(l)-1 of the Income Tax regulations.

Staff 17-2 Please refer to the rebuttal testimony of David A. Hodgson at page 8, lines 1-2 which states, “Included in the revenue requirement is the total tax expense of a utility – both currently payable and deferred or future owing taxes.” Did the federal income tax expense included in the rates set by the PUCT in Docket No. 46449 include both the currently payable and deferred or future owing taxes? If the answer is no, provide a detailed explanation of how the federal income tax expense included in the rates set in that case did not include both currently payable and deferred or future owing taxes.

Staff 17-3 Please confirm that the Bradley M. Seltzer that provided rebuttal testimony in this proceeding is the same Bradley M. Seltzer shown as a contact related to the article titled *“But wait, there’s more.” – Rev. Proc. 2020-39 provides guidance on the*

proper treatment of excess deferred taxes, and other normalization issues” that was published on the Eversheds Sutherland website on August 17, 2020, and which states in part:

The IRS has issued a series of private letter rulings regarding the treatment of net operating loss carryforwards (NOLCs). Those rulings recognize that until the RPU actually utilizes the net operating loss, they have not received the interest-free loan from the government provided by accelerated depreciation. Virtually all of these rulings require the use of the “with and without” method to determine the portion of the NOLC that is attributable to accelerated depreciation and hence cannot be used to reduce the rate base of the utility. Rev. Proc. 2020-39 departs from this consistent guidance and authorizes the use of “any reasonable method...that does not clearly violate the normalization requirements.”

Eversheds Sutherland Observation – Although it is true that the existing regulations do not prescribe a single method of addressing NOLCs, and the IRS is understandably reluctant to overstep its jurisdiction over regulatory issues consistent with the Tenth Amendment to the U.S. Constitution, the adoption of this flexible standard and uncertainty over whether a method “clearly” violates normalization introduces unnecessary potential future disputes (and a proliferation of private letter ruling requests) in an otherwise settled area.

Staff 17-4 Please confirm that Rev. Proc. 2020-39 referenced in the article cited in Staff 17-3 above states in part at Section 4.02:

.02 Net operating loss carryforward (NOLC). Compliance with normalization requires a determination of the source of an NOLC so that rate base is not overstated in jurisdiction in which net deferred tax liabilities reduce rate base. While § 16167(l)-1(h)(1)(iii) is the relevant general authority, there is not one single methodology provided for determination of the portion of an NOLC that is attributable to depreciation. Section 1.167(l)-1(h)(1)(iii) instead informs taxpayers that the amount and time of the deferral of tax attributable to depreciation when there is an NOLC should be taken into account in such “appropriate time and manner as is satisfactory to the district director.” Regulating commissions have expertise in this area, and any reasonable method for determining the portion of the NOLC attributable to depreciation should generally be respected provided such method does not clearly violate the normalization requirements.

Staff 17-5 Refer to the testimony of David A. Hodgson at page 3, lines 11-13 which states “Staff’s recommendation to disallow SWEPCO’s NOL carryforward in this case is the exact type of consolidated tax adjustment the Texas Legislature repealed in

2013.” Please provide a detailed explanation of how excluding from rate base a NOLC asset for which SWEPCO received cash payment and is no longer on SWEPCO’s actual books and records is the exact type of consolidated tax adjustment adopted by the Commission in Docket No. 14965, Docket No. 16705, Docket No. 22350, Docket No. 22355, Docket No. 28840, and Docket No. 33309 wherein the tax losses of utility affiliates were used to calculate a “tax shield” or “interest credit.”

- Staff 17-6** Please refer to the rebuttal testimony of David A. Hodgson at page 13, lines 1-3 and SWEPCO’s Response to Staff’s 9th RFI at Staff 9-21, referenced therein, and provide the language used to report the company’s perceived risks in the Risk Factors section of the Form 10-K to the Securities and Exchange Commission of AEP Inc. and SWEPCO for the fiscal year ending December 31, 2020. If such perceived risk was not reported, provide a detailed explanation and justification for why it was not reported, including whether the risk associated with a potential normalization violation is perceived to be lower or higher than the risk factors actually reported.
- Staff 17-7** Please provide the actual balance of SWEPCO’s NOLC asset reported on the December 31, 2020 10-K report to the Securities and Exchange Commission of AEP, Inc. and SWEPCO. Please confirm that the balance reported is consistent with GAAP. If it is not consistent with GAAP, why is it not consistent?
- Staff 17-8** Please provide the actual balance of SWEPCO’s NOLC asset reported on the March 31, 2020 10-Q report to the Securities and Exchange Commission of AEP, Inc. and SWEPCO. Please confirm that the balance reported is consistent with GAAP. If it is not consistent with GAAP, why is it not consistent?
- Staff 17-9** Please refer to Item No. 394 filed in Project No. 35588 on the PUCT Interchange, which is SWEPCO’s *FERC Form No.1: Annual Report of Major Electric Utilities, Licensees and Others and Supplemental Form 3Q: Quarterly Financial Report for the first quarter of 2020*. Please provide the actual March 31, 2020 balance of SWEPCO’s NOLC asset that was reported on this form at page 16 of 96. Please confirm if this amount is recorded consistent with the FERC Uniform System of Accounts. If the amount of SWEPCO’s NOLC asset reported on this page is not consistent with the FERC Uniform System of Accounts, why is it not consistent?
- Staff 17-10** What amount of the \$455,122,490 stand-alone NOLC asset claimed by SWEPCO is actually available for SWEPCO to use to offset future income tax liabilities and avoid cash payments to its parent or the IRS? If the full \$455,122,490 is not available to offset future income tax liabilities and SWEPCO must make cash payments to its parent or the IRS, how does that impact SWEPCO’s ability to use the cash received through the tax allocation agreement to fund investments as suggested by the rebuttal testimony of Mr. Hodgson?

Staff 17-11 For each of the years 2009, 2011, 2013, 2014, 2015, 2018, 2019, and 2020 confirm whether SWEPCO actually made or anticipates making cash payments to its parent or the IRS for federal income tax liabilities for each year. If SWEPCO made cash payments to its parent or the IRS in these years please provide the amounts of each actual cash payment made by SWEPCO to its parent or the IRS, shown separately for each year. Please also explain how any cash payments by SWEPCO for income taxes in these years impacted the use of the cash received through the tax allocation agreement to fund investments as suggested by the rebuttal testimony of Mr. Hodgson.

Staff 17-12 Refer to the rebuttal testimony of David Hodgson at page 25, lines 8-9 which states:

Second, Staff's calculation uses a Texas Retail Allocation factor of 36.94%. The calculation provided by the Company has a 35.01% Texas Retail allocation factor.

Please confirm that SWEPCO used a Texas Retail allocation factor of 36.94% at WP B-1.5.17 (Dolet ADFIT Off-Set) to calculate the ADFIT value SWEPCO proposed to use to offset the Dolet Hills book value and explain how using the same factor that was used by the company is an "error or omission" in Staff's calculation as implied by Mr. Hodgson at line 2.

Staff 17-13 Please refer to the rebuttal testimony of Michael A. Baird at pages 37 line 16 through page 39 line 9.

- a.) Please confirm that the Texas jurisdictional differences referenced by Mr. Baird existed as of January 1, 2019.
- b.) Please provide the January 1, 2019 balances of each Texas jurisdictional difference referenced by Mr. Baird.
- c.) Please confirm that SWEPCO did not include the January 1, 2019 balance of the Texas jurisdictional differences in the denominator of the calculation of its effective ad valorem tax rate.
- d.) Please confirm that the January 1, 2019 balances of the other investment accounts to which the effective ad valorem tax rate is applied are included in the determination of the .00998582 effective ad valorem tax rate Mr. Baird recommends should be used.
- e.) Does Mr. Baird agree that the January 1, 2019 balances of the Texas jurisdictional differences should be included in the determination of the effective ad valorem tax rate in order to properly synchronize the final amount of ad valorem taxes with the final level of investment? If Mr. Baird does not agree, please provide a detailed explanation and justification for why the Texas jurisdictional differences balances should be excluded from the determination of the ad valorem rate but then have that rate applied to those differences to determine ad valorem tax.

- f.) What is the effective ad valorem tax rate if the January 1, 2019 balances of the Texas jurisdictional differences are included in the determination of the rate?